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STATE OF NEW JERSEY
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Celeste Fasone
Director

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January 8, 1993

FEDERAL COMMUNICATIONS COMMISSION
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VIA FEDERAL EXPRESS OVERNIGHT MAIL

Hon. Donna R. Searcy, Secretary
Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Re: In The Matter Of

Implementation of Section 3
of the Cable Television Consumer
Protection and Competition
Act of 1992

MM Docket No. 92-262

Tier Buy-Through Prohibitions

Dear Ms. Searcy:

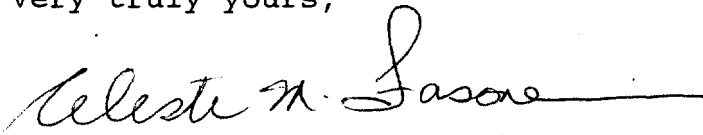
Enclosed please find an original and 12 copies of the **Comments** of the Staff of the New Jersey Office of Cable Television for filing in the above matter. We have included copies for the Chairman, each Commissioner and Ms. Mary Beth Richards.

Kindly place the Office on the service list for this docket.

Please return one copy marked "Filed" in the enclosed addressed, stamped envelope.

Thank you for your consideration.

Very truly yours,


Celeste M. Fasone
Director

CAR/et

Enclosures

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JAN 11 1993

FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In The Matter Of

Implementation of Section 3

of the Cable Television Consumer MM Docket No. 92-262

Protection and Competition

Act of 1992

Tier Buy-Through Prohibitions

Comments of the Staff of the New Jersey

Office of Cable Television,

Board of Regulatory Commissioners,

on Notice of Proposed Rule Making

The Staff of the New Jersey Office of Cable Television (hereinafter "Office"), of the Board of Regulatory Commissioners (the "Board"), respectfully submits the following comments to the Notice of Proposed Rule Making released by the Federal Communications Commission (hereinafter "Commission") on December 11, 1992. The Board has broad regulatory authority over cable television operations in the State of New Jersey pursuant to N.J.S.A. 48:5A-1 et seq. and is the franchising authority for New Jersey cable television systems. The Office has extensive experience over a period of 20 years in the review of system

specifications, design, construction, investigation and resolution of disputes between cable operators and their subscribers, including the complaints about programming packaging and marketing, and, prior to 1987, regulated rates for basic service.

System Capability in Franchise Area

The state presently has 2.0 million subscribers served by 48 separate systems, many of which have multiple headends or hubs. Data from cable operator¹ responses to the Office's statewide survey at the beginning of 1992 show that as of the close of 1991, 41 utilized addressability as a method of securing premium services throughout their systems. One was addressable from 11 of its 13 headends/hubs. Of the remainder, five were small systems of less than 10,000 subscribers each, serving a combined total of 22,800 subscribers. Only one larger system, with about 17,000 subscribers in a largely seasonal community, lacks addressability. All addressable systems have indicated that they have interfacing between their addressability computers and their computerized billing system, allowing the operator to remotely access subscribers using addressable converters.

¹For brevity purposes we shall use the term "cable operator" to refer to all providers of cable television service.

Converter Availability

As indicated above, all but a handful of small systems in the state are addressable. More significant to the implementation of the prohibition, and its potential cost impact on the operators, is the extent to which addressable converters have been placed in homes. The Office does not have information on the number of subscribers with addressable converters in the addressable systems, and believes that such information should be reported to franchising authorities in order to track implementation.

Many operators have announced that nonbroadcast channels previously available to subscribers with cable ready sets as part of the formerly "basic" service are being split off from broadcast channels under the new statutory definition of basic service.² This may force subscribers to take converters at additional costs to both the operator and the subscriber, presenting an allocation issue for the rate regulation proceedings.

Immediate implementation of the prohibition may accelerate deployment of addressable converters to customers

²For consistency and clarity, unless otherwise noted, the term "basic" service used herein refers only to basic service as defined by the 1992 Act.

who do not want intermediate tiers or cable programming services. Indeed, the consumer desire to have more choice among what services they take, or do not take, may accelerate the deployment of addressable converters. The countervailing forces are the timeframe required to address the customer equipment compatibility issues and the impact of converter costs on the rate process.

Rate Impact

It does not follow that compliance with the Commission's interpretation that programming beyond the statutory basic cannot be cumulative, would force operator to raise rates. At least one operator has suggested it might test the sale of premium channels without requiring the subscriber to purchase the newly defined basic tier. This option could add new customers. Given that less than 10,000 subscribers in all of New Jersey presently take only the minimum broadcast basic, it is unlikely the state's nearly 2.0 million subscribers will drop the additional channels they are now receiving on an expanded "basic". Those who might do so are likely to redirect the savings toward their preferred premium or a pay per view event.

Meaning and Scope of Buy-Through Prohibition

The Office agrees with the Commission's interpretation that the buy-through prohibition is directed at cable operators who frequently require cumulative purchase of

premium channels or tiers. We also agree with the Commission's view (discussed both in NOPRM under this docket and under MM Docket 92-266 NOPRM on "Rate Regulation") that the 1992 Act contemplates a single "basic tier" and that customers are only required to purchase that newly-defined basic level of service in order to reach any other "cable programming service".

The Office has a longstanding requirement that cable television companies file information on rate and channel changes. Based on these notices, it is clear that at least some cable operators are requiring other levels of service beyond their basic service to be cumulatively purchased in order to obtain other premium packages. These systems have the apparent technological capability to comply; one operator, when questioned on the offering, wrote in reply that they had the right to do this under the 1992 Act, even though it conflicts with the clear letter and intent of the new law to foster the ability of customer to choose freely. It is deeply disturbing that there is an apparent intention on the part of some operators in New Jersey to flout the prohibition.

We strongly disagree that there can be any justification for the premise on the part of some cable operators that if single channel premium services are offered on a tier or cluster under one price, that the buy through prohibition does not apply simply because the premium channels are not purchased individually.

Even now, a month after the general effective date of the 1992 Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act"), many subscribers are clearly being given the impression that they must subscribe to more than just the basic service in order to select other cable programming services.

Enforcement

Clearly, there is a need for the Commission to promulgate regulations that facilitate close scrutiny and prompt enforcement of Congressional intent.

Matters Rules Should Address

The Office views implementation of the prohibition as being more of a rate and marketing matter, than a technical one. Although it appears to be less problematic for the systems in New Jersey, we do recognize that addressable status encompasses a number of possible hardware configurations. Recognizing this, perhaps the most appropriate avenue for the Commission is to impose implementation and progress report filing requirements to enable franchise authorities to monitor the status of individual system's ability to comply with the anti-buy through provision.

1. In systems which previously had cumulative purchase requirements, but have immediate implementation capability, operators must be required to provide quarterly notices to subscribers stating that they have the option of buying premium services separately.
2. Companies claiming technological limitations must advise the franchising authority as to the nature of the limitations by a date to be specified by the Commission.
3. The Commission should also require cable operators to file a timetable for introducing the necessary technology.
4. The option to pass over certain premium services should be made available to customers as soon as the technology is phased in their neighborhood. There is no justification for waiting until it can be done for the entire system.
5. Cable operators must file progress reports with franchise authorities on numbers of customers, numbers having addressability available, addressable converters deployed, numbers of channels addressable individually, or in groups.
6. As noted by the Commission, unbundling has potential discriminatory impact--- an inherent conflict in the statute. Individual programming and the reasonableness of bundled programming is more appropriate as a rate issue. Clearly packaging is a critical element of competition, but there

also appears a policy desire not to have services cross subsidized.

7. Timetable be developed and filed with the franchising authority for implementation of full, single channel a la carte options where no, or only limited, compliance is presently possible.

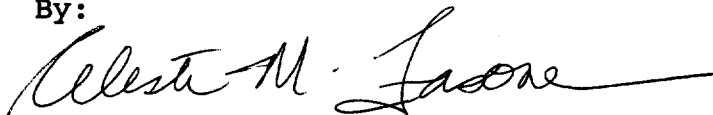
8. Rules should make it clear that franchising authorities can take remedial action to prevent or discontinue practices which violate the prohibition.

9. Should the Commission determine that cable operators are permitted to require more than one premium package or channel in addition to the newly defined minimum basic level for access to other services, it should be clear that such services thereby become "permitted additions to basic tier" and are thereby subject to regulation by the franchising authority pursuant to 47 U.S.C. Sect 543(b)(7)(B).

Respectfully submitted,

Staff of the
OFFICE OF CABLE TELEVISION,
BOARD OF REGULATORY COMMISSIONERS

By:

A handwritten signature in dark ink, appearing to read "Celeste M. Fasone", is written over a horizontal line.

Celeste M. Fasone
Director

Dated: January 8, 1993